

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
ENTERED

FEB 03 2005

Michael N. Milby, Clerk of Court

LA WANNA REVOIR,

Plaintiff,

v.

JO ANNE B. BARNHART,
Commissioner, Social
Security Administration,

Defendant.

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CIVIL ACTION NO. H-04-2368

OPINION ON SUMMARY JUDGMENT

Plaintiff La Wanna Revoir seeks judicial review of the final decision of the Commissioner of Social Security denying her claim for disability insurance benefits under the Social Security Act. 42 U.S.C. § 401, *et seq.*

Before the court are the parties' motions for summary judgment. The court has considered the motions, all relevant filings, the administrative record, and the applicable law. For the reasons set out below, Plaintiff's Motion for Summary Judgment (Dkt. No. 12) is DENIED, Defendant's Motion for Summary Judgment (Dkt. No. 14) is GRANTED, and the Commissioner's decision is AFFIRMED.

I. Background

Revoir was born in 1957 and was 46 years old on August 5, 2003, the date of the hearing. (Tr. 12, 246).¹ She attained a high school education and completed two years of college education. (Tr. 250). She has past work experience as a customer service representative, a job which she held

¹ The transcript of the administrative record will be cited as "Tr. ____".

for eighteen years. (Tr. 46, 251). Revoir claims that she has been disabled since September 21, 2001, due to a herniated disc and arthritis in her hips. (Tr. 12-13).

Revoir filed an application for disability insurance benefits on January 2, 2003. After her application was denied at the initial and reconsideration levels, she requested a hearing before an administrative law judge. (Tr. 12).

The medical record evidence indicates that Revoir sought medical treatment for her lower back pain in July 2001, from Dr. Valenson. (Tr. 70). Dr. Valenson ordered a CT scan of her lumbar spine in July 2001, which yielded normal results. *Id.* Dr. Garcia reported that after eight weeks of therapy using analgesics and muscle relaxants that Revoir did not appear to have experienced “any significant improvement.” (Tr. 92). Following this assessment, Dr. Garcia performed a series of epidural steroid injections over the course of several months. (Tr. 80). A CT scan conducted in January 2002, revealed minimal degenerative changes of the lumbar spine. (Tr. 73). Dr. Mims conducted back surgery on April 12, 2002, to explore and repair nerve compression. (Tr. 172). He then performed a lumbar MRI which revealed degenerative lumbar disc disease and no evidence of disc herniation or significant spinal stenosis. (Tr. 167-68). William Osborn, Ph.D., completed a mental status evaluation of Revoir on July 1, 2002, which revealed a mild level of generalized anxiety and moderate depression. (Tr. 137). He found that she could perform routine, repetitive tasks and maintain concentration and attention. (Tr. 138). Dr. Levine treated Revoir’s recurring pain with a series of prescription drugs between October 1, 2002, and February 25, 2003. (Tr. 195-201).

At the hearing, Revoir complained of chronic lower back pain and numbness in her right leg. (Tr. 250, 257). She reported that she could alternately sit and stand for approximately fifteen to twenty minutes at a time. (Tr. 252). Revoir testified that she takes multiple pain medications which

helps to decrease her pain, but does not eliminate it entirely. (Tr. 258). The vocational expert, Jennifer Obbre, testified that Revoir's residual functional capacity precluded her from returning to her work as a customer service representative, which is classified as sedentary, semi-skilled work. (Tr. 261). Obbre further testified that Revoir could perform sedentary, unskilled work as a file clerk, telephone operator, general office clerk, or receptionist based upon Revoir's age, education, past relevant work experience, and residual functional capacity. (Tr. 261-62). Obbre asserted that there were a significant number of these jobs in the regional, as well as national economy. (Tr. 262).

After hearing the testimony and reviewing the medical record, the ALJ found that Revoir has low back pain, a severe impairment, but one that does not meet or medically equal the listed impairments in Appendix 1, Subpart P, Regulation No. 4. (Tr. 18). Although the ALJ found Revoir's assertions of pain were credible, the ALJ determined her assertions were disproportionate to the objective medical record, and that the record did not support Revoir's allegations of severe limitations. (Tr. 15-16). Based on Revoir's residual functional capacity, the ALJ found that she could perform sedentary work as a file clerk, telephone operator, general office clerk, or receptionist as described by Obbre at the hearing. (Tr. 17). The ALJ concluded that Revoir was not disabled and was not entitled to disability insurance benefits. (Tr. 19).

On January 28, 2004, Revoir filed a Request for Review of Hearing Decision with the Social Security Administration. (Tr. 8). The Appeals Council denied this request on April 16, 2004, making the ALJ's decision the final decision of the Commissioner of Social Security. (Tr. 4).

II. Standard of Review and Applicable Law

The court's review of the Commissioner's decision regarding disability is limited to a determination of (1) whether the proper legal standards were applied to evaluate the evidence and

(2) whether the administrative record, taken as a whole, provides substantial evidence for the final decision. 42 U.S.C. § 405(g); *Watson v. Barnhart*, 288 F.3d 212, 215 (5th Cir. 2002). Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Masterson v. Barnhart*, 309 F.3d 267, 272 (5th Cir. 2002). It is not the role of the court to substitute its findings of fact for those of the Commissioner or to resolve conflicting evidence. *Id*

To determine whether a claimant qualifies as “disabled” under 42 U.S.C. § 423(d)(1)(A), the Commissioner uses a sequential five-part inquiry: (1) whether the claimant is presently working; (2) whether the claimant has a severe physical or mental impairment; (3) whether the impairment is listed, or equivalent to a listed impairment in appendix I of the regulations; (4) whether the impairment prevents the claimant from doing past relevant work; and (5) whether the impairment prevents the claimant from performing any other substantial gainful activity. 20 C.F.R. § 404.1520; *Leggett v. Chater*, 67 F.3d 558 (5th Cir. 1995). The burden of proof lies with the claimant to prove disability under the first four parts of the inquiry; the burden shifts to the Commissioner at the fifth step. This inquiry terminates if the Commissioner finds at any step that the claimant is or is not disabled. *Waters v. Barnhart*, 276 F.3d 716, 718 (5th Cir. 2002).

III. Discussion

Revoir makes two challenges to the ALJ’s decision: (1) that no substantial evidence supports the finding that Revoir has the residual functional capacity to perform sedentary work; and (2) that the ALJ failed to obtain medical expert testimony at the hearing to refute or corroborate medical evidence from her treating physicians.

A. Residual Functional Capacity for Sedentary Work

The ALJ found that Revoir “has the residual functional capacity to perform the demands of sedentary exertion with the need to sit or stand as needed for pain relief. The claimant is further limited in her ability to attend to or concentrate on work tasks for extended periods.” (Tr. 18). In reaching this conclusion, the ALJ expressly considered Revoir’s subjective complaints of pain and the extent to which those complaints can reasonably be accepted as consistent with the objective medical evidence and other evidence. *See* 20 C.F.R. § 404.1529; Social Security Ruling 96-7p. While conceding that Revoir “is credible in her assertion of pain,” the ALJ concluded that her “allegations of discomfort are out of proportion with the objective medical record.” (Tr. 15-16).

The medical record unquestionably supports this judgment. Indeed, her surgeon and treating physician, Dr. Mims, made essentially the same point in his January 27, 2004, letter to Revoir’s attorney:

In essence, we have a situation with Mrs. Revoir where her pain complaints continue to be the only true problems, and all of her limitation of activities and work center around the painful complaints. Her examination is impressive **only** for painful complaints, **without any discrete neurological abnormalities**.

Tr. 240 (emphasis supplied). Other evidence corroborates this finding. For example, Revoir informed her doctor that she was able to perform all her household duties. She also continues to drive when and where needed, and has made recent trips to Alabama and South Carolina (Tr. 15). *See Leggett v. Chater*, 67 F.3d 558, 565 n.12 (5th Cir. 1995) (“It is appropriate for the Court to consider the claimant’s daily activities when deciding the claimant’s disability status”).

Revoir contends that the ALJ improperly disregarded the conclusory opinion of Dr. Mims that she was completely unable to perform even sedentary work. But such a statement by a treating

physician is a legal conclusion, not a medical opinion, and therefore has no special significance. 20 C.F.R. § 404.1527(e); *Frank v. Barnhart*, 326 F.3d 618, 620 (5th Cir. 2003).

In short, there is substantial evidence supporting the ALJ's finding that Revoir retained the ability to perform a significant range of sedentary work.

B. Failure to Obtain Additional Medical Expert Testimony at the Hearing

Revoir argues that the ALJ failed to obtain medical expert testimony at the hearing to either refute or corroborate the medical opinions of Drs. Mims, Garcia, and Levine regarding her diagnosis, treatment, and functional limitations.

The Act imposes a duty on the Commissioner to “develop the facts fully and fairly relating to an applicant’s claim for disability benefits.” *Boyd v. Apfel*, 239 F.3d 698, 708 (5th Cir. 2001). The ALJ may seek a medical expert’s opinion regarding the nature and severity of a claimant’s impairments, but is not required to do so. 20 C.F.R. §§ 404.1527(f)(2)(iii), 416.927(f)(2)(iii). *See Pierre v. Sullivan*, 884 F.2d 799, 802 (5th Cir. 1989) (ALJ is not required to order a consultative examination unless the record establishes that one is needed to render the disability decision); *Jones v. Bowen*, 829 F.2d 524, 526 (5th Cir. 1987) (decision to require a consultative examination is discretionary).

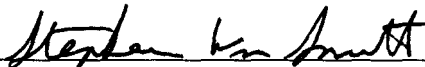
Here, the ALJ considered and gave appropriate weight to the diagnoses and treatment records provided by Drs. Mims, Garcia, and Levine which were contained in the objective medical record. The ALJ also reviewed numerous other medical records that Revoir provided, and questioned Revoir about her education, training, past work experience, physical limitations, and pain at the hearing. Because this evidence was more than sufficient to determine whether Revoir was disabled, the ALJ had no duty to seek a medical expert’s opinion regarding her condition. *Pierre*, 884 F.2d at 802.

Additionally, Revoir points to no evidence that, had the ALJ sought a medical expert's opinion, this would have changed the result of the proceeding. *Brock v. Chater*, 84 F.3d 726, 728-29 (5th Cir. 1996). No prejudice has been shown, and the ALJ committed no legal error by failing to seek such an opinion in this case.

V. Conclusion

The decision of the Commissioner denying Revoir's claim for disability insurance benefits is supported by substantial evidence and must be affirmed.

Signed on February 3, 2005, at Houston, Texas.



Stephen Wm. Smith
United States Magistrate Judge